

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRAD TOPHAM,

Plaintiff,

v.

Case Number 09-10577
Honorable David M. Lawson
Magistrate Judge Mona K. Majzoub

MICHIGAN DEPARTMENT OF CORRECTIONS,
TERRY MALLORY, CORRECTIONAL MEDICAL
SERVICES, DOCTOR WAZIENSKI, DOCTOR
MALIK, HOWARD TYREE, DAVOL, INC. and
C.R. BARD, INC.,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING
PLAINTIFF'S CLAIMS**

Presently before the Court is the report issued on September 24, 2009 by Magistrate Judge Mona K. Majzoub pursuant to 28 U.S.C. § 636(b). Judge Majzoub recommends that this Court dismiss with prejudice all of the plaintiff's claims against defendants Michigan Department of Corrections, Davol, Inc., and C.R. Bard, Inc., as well as the plaintiff's claims with respect to vicarious and supervisory liability against defendant Correctional Medical Services. Judge Majzoub also recommends that this Court dismiss without prejudice all of the plaintiff's claims against defendants Terry Mallory, Doctor Wazienski, Doctor Malik and Howard Tyree, as well as the municipal liability claim against Correctional Medical Services.

Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d

1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 7] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's claims against defendants Michigan Department of Corrections, Davol, Inc., C.R. Bard, Inc., and Correctional Medical Services for vicarious and supervisory liability only [dkt. #1] are **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that the plaintiff's claims against defendants Mallory, Wazienski, Malik, Tyree, and Correctional Medical for municipal liability only [dkt. #1] are **DISMISSED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 26, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 26, 2009.

s/Teresa Scott-Feijoo
TERESA SCOTT-FEIJOO